

§ 15A-803. Attendance of witnesses.

(a) **Material Witness Order Authorized.** – A judge may issue an order assuring the attendance of a material witness at a criminal proceeding. This material witness order may be issued when there are reasonable grounds to believe that the person whom the State or a defendant desires to call as a witness in a pending criminal proceeding possesses information material to the determination of the proceeding and may not be amenable or responsive to a subpoena at a time when his attendance will be sought.

(b) **When Order Issued.** – A material witness order may be issued by a judge of superior court at any time after the initiation of criminal proceedings. A judge of district court may issue a material witness order only at the time that a defendant is bound over to superior court at a probable-cause hearing.

(c) **How Long Effective.** – A material witness order remains in effect during the period indicated in the order by the issuing judge unless it is sooner modified or vacated by a judge of superior court. In no event may a material witness order which provides for incarceration of the material witness be issued for a period longer than 20 days, but upon review a superior court judge in his discretion may renew an order one or more times for periods not to exceed five days each.

(d) **Procedure.** – A material witness order may be obtained upon motion supported by affidavit showing cause for its issuance. The witness must be given reasonable notice, opportunity to be heard and present evidence, and the right of representation by counsel at a hearing on the motion. Counsel for a material witness may be appointed and compensated in the same manner as counsel for an indigent defendant. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services. The order must be based on findings of fact supporting its issuance.

(e) **Order.** – If the court makes a material witness order:

- (1) It may direct release of the witness in the same manner that a defendant may be released under G.S. 15A-534.
- (2) It may direct the detention of the witness.

(f) **Modification or Vacation.** – A material witness order may be modified or vacated by a judge of superior court upon a showing of new or changed facts or circumstances by the witness, the State, or any defendant.

(g) **Securing Attendance or Custody of Material Witness.** – The witness may be required to attend the hearing by subpoena, or if the court considers it necessary, by order for arrest. An order for arrest also may be issued if it becomes necessary to take the witness into custody after issuance of a material witness order. (1973, c. 1286, s. 1; 2000-144, s. 29.)